IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA v. PATRICK CHURCHVILLE Defendant.	Criminal Case No. 16-CR-068-S

UNITED STATES' SENTENCING MEMORANDUM

The United States provides this Memorandum in support of its position on sentencing and in response to Defendant's object to the Presentence Investigation Report (PSR).

I. INTRODUCTION

This case involves Patrick Churchville's three-and-one-half year scheme to deceive 114 investors out of $22 million, lying daily to his victims, some friends and family, all the while living in his $2.5 million house overlooking Narragansett Bay that he bought by stealing his investors' money.

Churchville's scheme to defraud was uncovered following an investigation and subsequent shut down of his company by the Securities and Exchange Commission (SEC) and this Court in the spring of 2015. The extent of Churchville's fraudulent conduct was laid out at his plea hearing in August 2016, at which he admitted to repeatedly lying to his investors in order to buy himself a $2.5 million home in Barrington on the water, orchestrate an elaborate Ponzi scheme to hide the fact that he had lost approximately $15 million of his investors' money and enable him to maintain his investment business, pay himself a huge salary and live the high-life. Churchville's three-and-one-half year criminal enterprise resulted in the financial ruin of many of his victim investors.

Churchville raises only one objection to the presentence investigation report -- the amount of and method used to calculate the loss amount. With two exceptions which do not impact the total guideline range – areas in the United States' calculation that upon further reflection and as a result of discussions with defense counsel the United States agrees should be deducted from the total loss amount – the United States supports the PSR's loss calculation. The United States maintains that the Probation Department's recommendations are well-founded and Churchville's objection should be overruled. After calculating Churchville's proper guideline range, the Court must consider all relevant factors under 18 U.S.C. § 3553(a) and impose sentence – a sentence which the United States contends properly falls within the guideline range of 188-235 months.

II. SENTENCING GUIDELINE CALCULATIONS

A. Loss: USSG § 2B1.1(b)(1)(L)

Even taking into account the adjustments to the loss amount the United States agrees should be made, the PSR correctly applies a 22-level upward adjustment, pursuant to Section 2B1.1(b)(1)(L), because the fraud loss exceeds $20 million.[1] (PSR ¶ 45) While defendant objects to this upward adjustment – contending that the loss is a mere $6,643,997 -- his attempt fails.

In determining the amount of loss resulting from a fraud offense, the district court is to determine the amount of loss by a preponderance of the evidence. The court is not required to compute the loss with precision. "The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based

[1] The defendant does not object to the PSR's use of the 2014 Sentencing Guideline Manual and thus, his objections are addressed in that context.

upon the evidence. For this reason, the court's loss determination is entitled to appropriate deference." See U.S.S.G. § 2B1.1, comment n.3, (C).

In light of these principles, Patrick Churchville is responsible, under the Sentencing Guidelines, for losses totaling more than $20 million.

As the Court is aware, the defendant is the subject of a wide-ranging action brought against him by the SEC. The criminal case against the defendant is much narrower and alleges that the defendant committed criminal actions in connection with his theft of $2.5 million from an investment with Oppenheimer & Co. and his Ponzi scheme involving fraudulent investments the defendant termed "Receivable Partners." In addition, in order to fund, in part, the Receivable Partners' investment scheme, the defendant stole from an investment known as Feingold O'Keefe.

At his plea hearing, and in the plea agreement, Churchville admitted to stealing $2.5 million of investor money in 2011 to purchase a home in Barrington, Rhode Island. Churchville also admitted to a scheme in which he obtained $21 million of his investors' money to hide millions of dollars in losses his investors had sustained in a Ponzi scheme in Maryland. As the Court is aware, the defendant created the Receivable Partners Ponzi scheme in order to hide the fact that he had lost millions of his investors' money in his investments with Jonathan Rosenberg, and others, referred to as the JER Investments. The defendant learned of the fact that he and his investors had been defrauded in June of 2010.[2] Instead of reporting this to his own investors, Churchville took a page from the JER principles' playbook and orchestrated his own $21 million Ponzi scheme by taking money from accounts already under his control, some of

[2] Later, in 2013 when the Maryland defendants were indicted, Churchville lied to his own investors and told them that he, like them, had only learned of the criminal nature of the JER investments when the Maryland indictments were handed down.

whom were JER investors, soliciting new investment money, and using this money to pay back the JER investors, in many instances **with their own money.** Churchville called this scheme the "Receivable Partners" "investments" and through an intricate series of fake loan documents, recycled the money back to the JER investors who actually had lost millions but who the defendant told were reaping the rewards on their JER investments. Had Churchville notified his investors that Clearpath had been scammed, his business would have come crashing down. Executing and maintaining his own $21 million Ponzi scheme was essential to Churchville being able to maintain his business, his lifestyle, and his credibility.

The parties' difference over the correct loss amount centers on whether Churchville is entitled to credit against the $21 million he defrauded from his investors for the money he paid back to the JER investors out of the Receivable Partners' Ponzi scheme. He is not.

At page 12 of his sentencing memo, Churchville suggests that from the original $20[3] million JER investment, in calculating the loss amount, the Court should first deduct approximately $14 million. That $14 million represents money that Churchville paid back to the JER investors by using his own Receivable Partners' Ponzi scheme. In addition, Churchville also asks that the Court deduct $603,303. Although defendant terms the $603,303 "cash payments," in reality, that $603,303 represents interest payments which were due on the original JER investment. Neither figure is appropriately deducted from the $20 in investor money Churchville cycled through his Receivable Partners' scheme.

The Sentencing Guidelines require that the calculation of loss be reduced by money returned to victims before the offense was detected. See U.S.S.C. § 2B1.1, comment n.3(E)(i).

[3] The parties disagree over the exact amount of the JER investment but for simplicity purposes in explaining the correct loss amount, the United States will use the defendant's $20 million number.

However, the victim/investors who he claims he is entitled to a credit for were paid back as victims of the JER scheme, not the defendant's own Ponzi scheme. In order to pay the JER investors the defendant stole money from many of those same investors as well as others, by lying to them about the existence of a new investment he termed "Receivable Partners," and told them the JER investments were paying off. However, by defendant's own actions, the investors he stole from still suffered losses attributable to the Receivable Partners' scheme. By its terms, U.S.S.C. § 2B1.1, comment n.3(E)(i) states that "loss shall be reduced by . . . the money returned to . . . the **victim** before the offense was detected." The offense in this case is conduct attributable to the defendant, the Receivable Partners Ponzi scheme. The payouts to the JER investors for which the defendant seeks credit were because they had suffered a loss as a result of the JER debacle – the defendant was not paying them back as victims of his Receivable Partners scheme, the offense he has plead guilty to in this case and the scheme by which the victims identified in this case were impacted. These investors were victims of the JER scheme in addition to being victims of defendant's Receivable Partners Ponzi scheme. The Sentencing Guidelines only allow credit for payments made to victims of **the defendant's offenses**.

Although the defendant is not entitled to credit for the approximately $14 million plus $606,303 he paid to JER investors, the United States has recently located source documentation to support the $4,231,964 in repayments to Receivable Partners investors, which is also detailed at page 12 of defendant's sentencing memorandum. This number is greater that the amount originally detailed in the United States' Prosecution Version, and relied on by the Probation Office in preparing the PSR. Thus, taking into account repayments to Receivable Partners in the amount of approximately $4.2 million, in accordance with U.S.S.C. § 2B1.1, comment n.3(E)(i), the correct loss amount attributable to the Receivable Partners scheme is $16,278,486. Adding the $2.5 million defendant stole to purchase his waterfront home, and the $3.5 million he took from the Feingold O'Keefe investment, the total loss is $22,278.486.[4]

III. APPLICATION OF 18 U.S.C. § 3553

Title 18, United States Code, Section 3553(a) requires the Court to impose a sentence that is "sufficient, but not greater than necessary" to comply with the purposes of sentencing. In order to determine the "particular" sentence to impose, this Court must consider the familiar statutory factors listed in §§ 3553(a)(1)-(7). One of those factors is the advisory range set by the Sentencing Guidelines and another is the Commission's policy statements. See 18 U.S.C. §§ 3553(a)(4), (a)(5). Although the Sentencing Guidelines are advisory only, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 552 U.S. 38 (2007). For two reasons, this Court should give serious consideration to the advisory Guideline range.

First, the Sentencing Guidelines are the *sole* factor in § 3553(a) that provides any objective sentencing range which can practicably promote the overall goal of minimizing unwarranted sentencing disparities, a statutorily mandated factor. See 18 U.S.C. § 3553(a)(6); see also Booker v. United States, 543 U.S. 220, 250 (2005) ("Congress' basic statutory goal – a system that diminishes sentencing disparity"); id. at 253 ("Congress' basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity"). The Supreme Court created the advisory system to "continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining

[4] Previously, the United States had been also adding the approximately $2.1 million in fees the defendant paid himself during the Receivable Partners' scheme to the loss of approximately $22 million, but in reality, upon reflection, that number is already included in the $22 million loss amount.

flexibility sufficient to individual sentences where necessary." Booker, 543 U.S. 264-65. The only way to prevent widespread, unwarranted disparities is to give serious consideration to the Guidelines.

Second, the Guidelines generally deserve serious consideration because they are "the product of careful study based on empirical evidence derived from the review of thousands of individual sentencing decisions." Gall, 552 U.S. at 46. It is true that there is no "presumption" that a Guideline sentence is the "correct" sentence, Rita v. United States, 551 U.S. 338, 351 (2007), and that there is broad sentencing discretion post-Booker. The Commission is charged by statute to periodically review and revise the Guidelines as the Commission collects comments and date from numerous sources in the criminal justice system, 28 U.S.C. § 994(o), and these ongoing efforts to refine the Guidelines are another reason to seriously consider the advisory Guideline range.

In the event this Court exercises its discretion to sentence outside the advisory range, there are guideposts for evaluating what the extent of the deviation should be and when a non-Guidelines sentence will be deemed unreasonable on appeal. These guideposts are set forth in Supreme Court cases. The Supreme Court instructs that it is "clear that a district judge must give serious consideration to the extent of any [variance] from the Guidelines and must explain [his] conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications." Gall, 552 U.S. at 46. The degree of the deviation from the advisory Guidelines range is relevant in choosing the particular sentence:

> If [the judge] decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find is uncontroversial that a major departure should be supported by a more significant justification than a minor one.
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> Gall, 552 U.S. at 50.

In the instant case, a through consideration of all sentencing factors set forth in 18 U.S.C. § 3553(a) dictates that the most appropriate sentence is one within the advisory guideline range of 188 to 235 months.

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

Patrick Churchville's offense were complex, highly orchestrated, and devastating to many, many investors. Churchville engaged in an extensive, well-planned three-and-one-half-year scheme to defraud that involved investments of over $20 million. On a daily basis, he defrauded and lied to numerous individuals, wreaking havoc on the lives of his victims.[5] His scheme demonstrated total disrespect for the law and for basic moral and ethical behavior. Churchville's crimes were generated and prolonged by daily decisions over a three-and-one-half-year period. He could have ceased his criminal activity at any point. Instead, he exhibited complete disregard for the fact that his investors made significant life decisions, about things like how to fund education expenses of children and grand-children, and retirement decisions, based on his false promises and the fraudulent documents he created to lure and lull investors.

As illustrated by the following passages from the Victim Impact Statements, Churchville is responsible for causing profound levels of emotional distress as well as eliminating the financial resources of many, in some cases wiping away the financial resources of multiple generations within families, the effects of which will be felt for decades:

> TH – "As far as Pat is concerned, I think it's important for the court to understand that this was not an isolated period of weakness or error. It was a longstanding, consistent pattern of duplicitous behavior – lying and stealing – over many years that resulted in the wholesale destruction of all of our savings.
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> My first inkling that something was wrong came in December 2013 when I met with Pat and bought him a bottle of [wine] for Christmas. He looked strangely

[5] See the Victim Impact Statements submitted to the Court.

uncomfortable. But apart from that one awkward moment, he never showed ANY remorse for his actions or any sign that he understood the magnitude of his wrongdoing. In all this time, I have never received a word of apology or explanation from Pat for his lies, thefts, and deceptions . . . .

While the loss of money has had a profound effect on my life and my future, far more devastating is the fact that those who I tried to help, be referring them to Pat, I hurt. And it is something I can't fix. Every morning I walk out of my house and look next door to where LB and [his/her] family once lives. By referring [him/her] to Pat, I opened the door to [his/her] financial ruin. There is no recovering from this. Because of Pat Churchville's financial abuse, none of our lives will ever be the same."

BZ[6] - speaking of her late mother: "Patrick took advantage of an elderly woman whose life-savings were destroyed and in the end, I think, he also contributed to her passing as she worried daily about where her money was."

WB – a disabled vet of 61 years old: "He has crippled me financially, and caused undue hardship, stress, anger, nightmares, problems with my marriage, and no money left penniless . . . ." Because of Mr. Churchville's fraudulent activities, he has harmed my finances so bad I am reduced to food stamps and heating assistance."

ED – "We have had consequences. . . . I am back in charge of managing our portfolio which has necessitated us taking on much more risk in retirement just to try to play catch up. This causes significant stress especially in the face of losing my eyesight. Many sleepless nights and depression. We live on a very tight and disciplined budget and are unable to pursue many of the things we had anticipated doing in our retirement. This 'debacle' has changed our lives. We are working people, no rich relatives, and we have always been such smart and discipline savers, it is unbearable to see all of this hard work turn to dust. We are unable to help our children in ways we both wanted an anticipated, so the ripple effect in the family is great."

D & LG – "This loss substantially reduces our savings and post-pones our retirement plans. In addition, as a result of our financial loss, we suffered significant emotional distress. For weeks after we first learned of the Ponzi scheme, we could not stop thinking of the betrayal of our trust and the negative impact on our financial situation. To this day, we are still plague by a feeling of betrayal and being victimized."

DL – "As a result of this offense, I have:

[6] Victim BZ is the daughter of one of Churchville's victims.

- Become insolvent in that my liabilities exceed my assets. I am unable to honor my debts as they fall due and my creditors have been patient since 2012. This may not continue.
- Suffered the loss of my remaining financial assets in my retirement.
- Made substantial changes to my employment, causing me to come out of retirement and seek employment, now at 68 years of age. I have not been very successful in obtaining employment income as a result, I am not able to repay my debts and so I remain insolvent.
- Had to sell my house and nearly all of our possessions and for the past three years my wife (70) and I have been forces to housesit pets etc. in exchange for accommodation. If the house-sitting opportunities fail, we will be in the street.

SSR - "Patrick's fraud and betrayal of trust in managing our money has affected me personally in many ways to include; depression, lack of trust in other money professionals, lack of trust in my own judgment of people and disbelief in professionals like Patrick – who is a crook, liar and thief. . . . . Due to Patrick's business practices I have experienced both emotional pain and suffering, extensive worry about the future, depressive moods, anger, and continuous worry."

As illustrated by the statements of the victims cited above, and others submitted to the Probation Office, the financial and emotional impact of Churchville's fraud on his victims is huge. Churchville's fraud nearly destroyed the lives of many of his 114 victims. His actions have enormous financial and emotional tolls. Once again it was his selfishness and self-preservation that guided his actions and decisions. During his scheme, he thought only of himself and never of the devastated victims.

The applicable guideline range appropriately recognizes the seriousness of a financial fraud scheme of this magnitude and the deleterious effect that it had on its victims. Considering all these aspects, the seriousness of this offense calls for a within-guideline sentence between 188 to 235 months.

B. The History and Characteristics of the Defendant

Given his background and employment, his business sense and extensive connections to the community, the defendant had every opportunity to succeed as an investment advisor. He could have, but he didn't, instead choosing to steal from his own investors in an attempt to cover up the losses they had suffered because of the JER investments. He in essence, doubled their pain by stealing from them a second time. Any suggestion that he did so merely out of fear and not greed should be soundly rejected. As he was shuffling money to and from Maryland in the course of his own Ponzi scheme, Churchville paid himself $2.1 million in fees and allowed Jonathan Rosenberg to take approximately $2 million. Churchville literally paid himself $2.1 million for sending a couple of emails to Jonathan Rosenberg telling him when, and how much money to wire back to Clearpath so that Churchville could lie to his investors, daily, about whether the JER investments were paying off. Indeed, although he knew that the JER investments were dead, Churchville used his own Ponzied payments to lure new investors – he created fake charts showing the "returns" on the JER investments, created prospectus, met face-to-face with new investors and lied about Clearpath's success with JER.

The financial benefits to the defendant of engaging in the Receivable Partners Ponzi scheme are actually staggering if one looks at the standard of living he was able to maintain by keeping his business running. Over the life of the scheme, Churchville paid $133,000 alone for landscaping at his house in Barrington.[7] The taxes paid to the Town of Barrington were nearly $90,000. Churchville's personal credit card expenses were outstanding -- $715,413. On top of that, he spent nearly $120,000 on country club fees. Quite simply, to tell his investors that their money was gone would have meant Churchville giving all this up and then some.

Also relevant is the fact that Churchville stole $2.5 million to purchase his house in Barrington while executing the Receivable Partners' scheme. If he really had the best of

[7] The attached spreadsheet was created by agents totaling expenses, i.e. checks paid out of Churchville's person bank account, to various entities from July 2011 through December 2014.

intentions in paying back the JER investors, he could have forgone his water front view of Narragansett Bay and started with the $2.5 million he stole to buy it. In the United States' view, the history and characteristics of Patrick Churchville, including his brazenness in fashioning his own scheme – which he executed flawlessly – justifies a guideline sentence.

C. The Need For the Sentence Imposed to Reflect the Seriousness of the Offense, To Promote Respect for the Law and to Provide Just Punishment for the Offense

A guideline sentence would reflect the seriousness of the offense, promote respect for the law, and adequately punish Patrick Churchville for the enormity of his criminal behavior. As described above, Churchville engaged in a long-term fraud scheme that damaged 114 victims. His conduct was astoundingly thoughtless as he showed no concern for his numerous victims and, instead, thoroughly enjoyed the fruits of his scheme. In the face of losing $15 million of his investors' money in the JER scheme, Churchville: (1) stole another $2.5 million to buy his house, which he bought after learning his investors had been duped by the Maryland schemers; (2) paid himself approximately $2.1 million in fees; and (3) let Jonathan Rosenberg keep approximately $2 million, If Churchville was truly motivated to protect the JER investors, he would have foregone his fees, never bought the house, and substantially reduced his standard of living. But he didn't. He lived as if nothing had happened. Churchville's selfishness and greed, repeated criminal behavior over the course of several years, calls for a lengthy prison sentence to punish the defendant and promote respect for the law. A guideline sentence is adequate to achieve those objectives.

D. The Need to Afford Adequate Deterrence to Criminal Conduct and To Protect the Public From Further Crimes of the Defendant

A sentence within the guidelines is necessary to deter other fraudsters as well as to protect the public from further criminal activity of the defendant. The justice system must send the appropriate message to those inclined to engage in wide spread fraud – a clear message that the justice system will severely punish such conduct. A guideline range sentence will achieve this objective. A sentence below the guideline range essentially informs society that these crimes are not significant enough to warrant the strictest punishment. A sentence below the guideline range will have less of a deterrent effect on other individuals facing the same temptation as the defendant to use the finances of others for the benefit of himself.

Furthermore, the public needs to be protected from Patrick Churchville – he didn't stop his fraud until he had to. Why did Patrick Churchville stop lying to his investors, for one reason and one reason only – because he got caught. Therefore, there is no reason to think that when he is released from prison he won't immediately resort to lying in order to lure new potential investor clients. A guideline sentence will protect the public from Churchville's fraudulent conduct as long as possible.

E. The Need to Provide the Defendant with Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner

There is no need in this case to adjust the sentence below the guideline range in order "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner . . . ." 18 U.S.C. § 3553(a)(2)(D). This factor, as well, justifies a within guideline range sentence.

F. The Need to Avoid Unwarranted Sentence Disparities Among Defendants Among Defendants with Similar Records Who have been Found Guilty

As stated above, while the sentencing guidelines are advisory, they remain the sole means available for assuring some measure of uniformity in sentencing, fulfilling a key Congressional goal in adopting the Sentencing Reform Act of 1984. Accordingly, the Supreme Court has held that "district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process" in order to assure fair, proportionate, and uniform sentencing of criminal offenders. Gall, 552 U.S. at 50 n.6. Most of the cases cited by the defendant for comparison, are not applicable. For example, taking them in reverse order, the cases the defendant cites on Page 29 of his Sentencing Memo and relevant distinguishing factors in each are as follows: United States v. Feibesh, 1:12-cr-028-M ($5 million, 81-yr old defendant with a gambling addiction, one victim, probation sentence); United States v. Hurst, 1:12-162-S (stipulated loss amount of $161,727, sentence yielded a 15-month sentence consecutive to 24-month mandatory minimum for aggravated identity theft count); United States v. Hebert, 1:14-085-S (loss approximately $1.2 million, guideline range of 33-41 months, sentence of 24 months, defendant had health issues and meager standard of living);United States v. Guzman, 1:16-034-S (loss $928,224, GSR 27-33, 12 month sentence consecutive to 24 for aggravated identity theft); United States v. Al Kabouni, 1:13-119-L (loss $1.9 million, guideline range 70-81 months, sentence 36-months). Thus, none of the cases cited by the defendant warrant an outside the range sentence in order to avoid disparity in sentencing.

IV. RESTITUTION

Because in handling investor funds the defendant commingled investor money, the task of sorting through which investors were victims of defendant's criminal schemes was difficult. In order to ensure the United States was meeting its obligations to all of the victims of defendants' crimes, we sent what we knew in all likelihood would turn out to be an over inclusive list of victims to the probation office. That list included approximately 194 victims. Based on our review of the victim impact statements submitted as a result of that list, and comparing those statements to the information the United States had already gleaned from the defendant's and his accountant's records, we submitted to the probation office a list of 114 victims who were impacted by defendant's criminal conduct. The spreadsheet submitted to probation lists the victims, which investment charged by the United States he or she invested in, the amount of money lost per the United States' initial calculation, the amount of loss the victim claims, and the reason for the difference between the United States' initial loss number and the number provided by the victim. There are many victims who lost much more money in their overall investments with the defendant than the losses that can be attributed to the defendant's criminal conduct. In most instances, that is reason for the differences between the United States' restitution figures and the victims' own.

However, as discussed in the defendant's sentencing memorandum, the United States and defense counsel have worked diligently to determine the loss amount and restitution due each of Churchville's 114 victims. Investigators for the United States viewed additional source documentation on March 13, 2017 that demonstrated additional payments made to the Receivable Partners' investors prior to Churchville's offenses being detected. The United States requires additional time to incorporate those payments into the figures it believes are due each victim in restitution and which were reflected on the spreadsheet provided to the probation office. Pursuant to 18 U.S.C. § 3664, the Court has 90 days to order restitution. The United States will submit its updated figures within one week of sentencing.

V. CONCLUSION

In light of the egregious nature of Patrick Churchville's conduct, the United States submits that there are no § 3553(a) factors which militate against imposition of a sentence within the guideline range; to the contrary, the § 3553 (a) factors, on balance, support the imposition of the recommended guideline punishment. Nothing in this case justifies a downward variance from the applicable range. To the contrary, the § 3553(a) factors demand the imposition of the recommended guideline punishment. There are simply no aspects of this case that make it unusual enough to fall below the advisory guideline range. All of the appropriate considerations of sentencing favor the imposition of a within-guideline sentence and the United States urges the Court, in exercising its discretion, to impose such a sentence.

Respectfully submitted,

STEPHEN G. DAMBRUCH
Acting United States Attorney

/s/ Dulce Donovan
DULCE DONOVAN
Assistant U.S. Attorney
United States Attorney's Office
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
401-709-5000 (office)
401-709-5001 (facsimile)
dulce.donovan@usdoj.gov

CERTIFICATE OF SERVICE

I, hereby certify that on this 15th of March, 2017, I caused the within United States' Sentencing Memorandum to be electronically filed with the United States District Court for the District of Rhode Island, using the CM/ECF System.

/s/ Dulce Donovan
DULCE DONOVAN
Assistant U.S. Attorney
United States Attorney's Office
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
401-709-5000 (office)
401-709-5001 (facsimile)
dulce.donovan@usdoj.gov